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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re R.G., a Person Coming
Under the Juvenile Court Law.

B294190
(Los Angeles County
Super. Ct. No. DK13000D)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Appellant,

v.

S.G. et al.,

Defendants and
Appellants.

APPEALS from orders of the Superior Court of Los Angeles
County, Michael E. Whitaker, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal,
for Defendant and Appellant R.G.

Konrad S. Lee, under appointment by the Court of Appeal,
for Defendant and Appellant S.G.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Stephanie Jo Reagan, Principal
Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court terminated the parental rights of S.G.
(mother) and R.G., Sr. (father) to R.G., Jr. (R.G.). (Welf. & Inst.
Code, § 366.26.)¹ Mother's appeal challenges the denial of her
petition for modification (§ 388), and both parents' appeals
challenge the court's rejection of the beneficial parental-
relationship exception to adoption. (§ 366.26, subd. (c)(1)(B)(i).)
We affirm.

BACKGROUND

I. Family background

R.G., age eight, is the youngest of mother's four children
and is father's only child.² Mother has an extensive history
dating to 1994 with Orange County Child Protective Services
(OCCPS), who had removed the children from her custody.
Although mother reunified with the children in Orange County,
the family continued to incur referrals alleging mother's failure to
assure that one child participated in mental health services,
sexual abuse of another child by another father, homelessness,
domestic violence, general neglect, marijuana use, and

¹ All further statutory references are to the Welfare and
Institutions Code.

² None of mother's older children is a party to this appeal.

unsanitary living conditions normally associated with drug use. After agreeing to a voluntary maintenance program, mother became homeless and moved to Los Angeles County, seemingly to avoid OCCPS.

Between 2014 and early 2015, the Los Angeles County Department of Children and Family Services (DCFS) received four referrals about the family. In August 2015 after the 30th referral in both Orange and Los Angeles Counties, DCFS filed a petition.

II. R.G.'s dependency

The juvenile court sustained the petition in October 2015 alleging the parents' drug abuse and history of severe domestic violence. It removed the children from the parents' custody. By July 2016, mother had lost legal and physical custody of all of her children except R.G.

Mother's case plan in R.G.'s dependency included (1) completing a full drug program with after care including a 12-step program and weekly random or on demand testing; (2) maintaining marijuana levels within "appropriate levels for medicinal use"; (3) participating in a support group for victims of domestic violence; (4) completing a developmentally appropriate parenting course; (5) attending individual counseling to address case issues including domestic violence, child protection, anger management, and substance abuse; and (6) verifying a sober and stable lifestyle. The court awarded mother weekly monitored visitation.

Father's court-ordered case plan involved similar drug rehabilitation and testing requirements to mother's. The juvenile court also ordered him to complete a certified domestic violence program and counseling to address case issues, including anger

management. And, just as with mother, father had to verify his sober and stable lifestyle. The court awarded father monitored visits, to be held separately from mother's visits.

Neither parent completed the case plan and neither parent visited R.G. consistently. Mother missed numerous drug tests and produced positive results for opiates and cannabinoids through 2017. She came to many visits while high on drugs. The juvenile court terminated mother's reunification services in May 2017 (§ 366.22) and father's services on September 19, 2017 (§ 366.25).

Meanwhile, when it detained R.G. in August 2015, DCFS placed him with a foster family who found him to be a "very lovable boy." Initially, the child cried whenever the foster mother left the house. He underwent therapy, which he completed in December 2016. At first, the foster parents agreed to become R.G.'s guardians, but in 2018, they decided to adopt the child. R.G. thrived in their care and did well in school where he made "very nice" friends.

Yecenia Riley, the foster care agency's social worker, wrote to DCFS in February 2018 that R.G.'s "adjustment to foster home is *very positive*, he has grown *very close to foster parents* and seems to be at ease in the home. He seems to have *positive relationships with peers* in the home as well. [R.G.] refers to [the foster parents] as *mom and dad* and *he has expressed wanting to be adopted* by current [foster] parents if he cannot return home." (Italics added.) In the fall of 2018, R.G. told DCFS that he would like to be adopted by his foster parents.

The adoption study approved the foster parents' home. On March 20, 2018, following DCFS's recommendation, the juvenile

court found that R.G. was likely to be adopted and ordered that he be referred for adoptive planning.

III. Post-reunification visits

Throughout the dependency, the parents had two-hour weekly visits that were always monitored. Their participation in visits was erratic and periodically they acted inappropriately.

In late 2017, Riley described visitation as “*problematic.*” (Italics added.) Mother came to eight visits “under the influence” between mid-September 2017 and mid-December 2017, and was incoherent when the foster mother tried talking to her. R.G. reported to the social worker that mother and maternal grandmother would fight and “yell and scream at each other” during visits. Father acted “strange[ly]” during and after a visit in December 2017.

Coinciding with these problematic visits, R.G.’s behavior changed, the foster parents noted. The child had difficulty with rules and authority in the foster parents’ home. He was disrespectful and bullied other children. The boy explained to DCFS that mother told him he did not have to do his schoolwork or follow the foster parents’ house rules because he was going home after the next hearing. Riley reported that mother’s instructions to the child “affected his behavior in the caregiver’s home.” The child resumed therapy.

Riley wrote to DCFS in February 2018 that “[R.G.] struggles with being honest with [foster] parent[s] if he feels he has to protect his parents so he may not always be forthcoming with information he needs to share with the [foster] parents.” Despite his reluctance, R.G. did share with Riley that mother told him not to report to the foster mother or the social worker an incident in which mother swore at a driver who came close to

mother's car. Both parents told the child that he would be returning home soon, and mother made negative comments about the foster parents to him. "All of these dynamics affect [the child] negatively and impact his growth and progress in the [foster] home," Riley wrote. The difficulties continued through May 2018. The child showed "significant improvement" once the social worker and the foster mother explained that it was possible he would be moved from the foster parents' home if he did not correct his behavior.

Mother also had problems with her visitation supervisors. The foster mother had asked to be relieved of monitoring duty in early 2017 after the parents threatened to file a lawsuit. Maternal grandmother took over supervision of mother's visits. In mid-March 2018, mother asked for a new monitor because she could not get along with maternal grandmother. In late March 2018, mother complained to DCFS that the foster mother had falsely accused her of acting inappropriately around R.G. during visits. Mother wanted a different visitation supervisor but her proposed monitor had a disqualifying criminal history. Things seemed to settle down by August and September 2018 when visits were problem-free. Father made an effort to participate in R.G.'s homework during visits, although he struggled with getting the child to do his homework.

IV. Mother's petition for modification (§ 388)³

In September 2018, mother filed a petition seeking to reinstate reunification services and liberalize visitation. The

³ Father also filed a section 388 petition, which the juvenile court denied. Father's appeal does not address that ruling and so we will not discuss it.

petition asserted that in September 2018, mother completed her outpatient and 12-step programs. Resumption of reunification services would be in R.G.'s best interest, mother posited, because the child recognized her as his mother and the two were closely bonded. She wrote that she maintained consistent and good visitation with him and had served in a parental role in his life.

In its response, DCFS observed that mother's certificate of completion provided no details about the number of sessions she attended, or what coping skills she learned to address drug abuse. Given mother's long history of drug abuse, DCFS believed that she needed the help of a licensed therapist to obtain true sobriety and to cope with her domestic violence issues. The report included a chart showing that *mother canceled seven* of 15 scheduled visits between July 6, 2018 and October 9, 2018. Two more visits lasted ten minutes or less because mother arrived late. R.G. told the social worker that he liked attending school and was happy living with the foster parents. He listened to his teachers and to the foster parents. DCFS recommended the juvenile court deny mother's petition.

At the combined hearing under sections 388 and 366.26, mother testified that her weekly visits lasted 30 minutes though she had missed some. She explained that she had done an intake assessment for a drug rehabilitation after-care program. She found a psychiatrist, whom she had seen twice by the time of the hearing. She also *planned* to enroll in life skills classes. Mother was currently working on step four of her 12-step program.

Both parents testified about their involvement with R.G. during visits and that the child was happy to see them. The juvenile court granted the parents' request to reopen the hearing to allow Riley to testify. Riley testified that *mother did not miss*

any visits. One visit only lasted a few minutes because of the child's school schedule. Riley described the child as "happy to see his mother" and "*all visits ha[ve] been warmth, hugs.*" (Italics added.) Riley characterized the child's relationship with the foster parents as "*cordial.*" (Italics added.)

The juvenile court declared itself unable to reconcile the conflicts between mother's admission on the one hand that she missed numerous visits, and Riley's testimony on the other hand, that mother had missed *no* visits, and found that the conflicts called into question the sum and substance of Riley's opinions. The court gave "little weight" to mother's, father's, or Riley's testimony, and found that mother failed to carry her burden. The court found that after three years, mother had not completed her case plan. While circumstances were changing, they had not changed. Nor had mother provided competent or sufficient evidence that granting the section 388 petitions was in R.G.'s best interest. The court observed that Riley did not explain why mother had never achieved unsupervised visits if visits were going as well as she described them. Mother's justification for her numerous cancellations was that pursuing an appeal in this case was more important than visiting her child.

V. The selection and implementation hearing (§ 366.26)

The juvenile court then turned to the question of permanency planning under section 366.26. After repeating that it gave little weight to the testimony of mother, father, or Riley, the court found by clear and convincing evidence that R.G. was adoptable, and that the parents had maintained regular visitation, albeit monitored, but had not established a bond with the child that outweighed the benefits the child would receive

from a permanent plan of adoption. The court terminated parental rights. Both parents appealed.

DISCUSSION

I. We do not re-assess the juvenile court's credibility findings

Recognizing that appellate courts do not evaluate the juvenile court's credibility assessments, mother and father nonetheless both challenge the court's determination that Riley was not credible, and its decision to give little weight to her testimony about the frequency and quality of the parents' visits with R.G.

The well-settled rule in California holds that “[i]t is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and *discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.*” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53, italics added.)

Mother's reliance on *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, is unavailing. That case involves the limited standard of review of a petition for writ of review of Workers Compensation Appeals Board decisions, which under that particular statutory scheme, allows appellate courts to reject the Board's factual findings if determined to be unreasonable or illogical. (*Id.* at p. 233.) Needless to say, this is

not a workers' compensation case and that statutory framework does not apply here. We will not re-assess the juvenile court's credibility determination or consider Riley's oral testimony.

II. No error in denying mother's section 388 petition

Mother challenges the juvenile court's finding that she failed to show that her circumstances had changed. To prevail on a section 388 petition, mother as moving party had the burden to establish by a preponderance of the evidence both the existence of new evidence or changed circumstances, and that the proposed change in the court's order would promote the best interests of the child. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 641–642; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) The requisite change in circumstances must be both genuine and substantial. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 615; *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) We review the juvenile court's factual findings for substantial evidence and its determination of the child's best interests and whether to change an existing order for abuse of discretion. (*In re Stephanie M.*, at pp. 317–318.) “An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason by making an arbitrary, capricious or patently absurd determination.” (*In re Marcelo B.*, at p. 642.)⁴

Mother did not carry her burden to show a genuine and substantial change in circumstance such that it would be in R.G.'s best interest to reinstate reunification services. After more

⁴ Mother contends that the applicable standard of review is de novo. For this assertion, she oddly cites cases involving the summary denial of a petition for modification, i.e., the denial of a section 388 petition without holding a hearing. (*In re Jeremy W.* (1992) 3 Cal.App.4th 1407.) But, this case does not involve a summary denial. The juvenile court held a hearing.

than three years, mother still had not fully complied with her case plan. She completed a support group for victims of domestic violence and an age-appropriate parenting course. But, although she finally graduated from a drug treatment program, mother did so just two months before the hearing. She has yet to undergo the court-ordered after-care program; she was only on the fourth of 12 steps; and she had only just found a therapist to address her unstable lifestyle. Furthermore, in the months of July to October 2018 alone, mother missed half of her visits. Effectively, all that mother has demonstrated is *changing* circumstances. “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.]

“ “[C]hildhood does not wait for the parent to become adequate.” ’ ” (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) The juvenile court did not abuse its discretion in denying the petition.

III. No error in declining to apply the beneficial parental-relationship exception to termination of parental rights

Mother and father separately appeal from the order terminating their parental rights. “ ‘The selection and implementation hearing under section 366.26 takes place after the juvenile court finds that the parents are unfit and the child cannot be returned to them.’ ” (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611.) At that hearing, the court must order one of three dispositional alternatives: adoption, guardianship, or long-term foster care.

Adoption is strongly preferred by the Legislature. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) Section 366.26, subdivisions (c)(1) and (c)(1)(B) direct, if the juvenile court finds that the child is adoptable — a finding neither parent challenges — “the court [to] terminate parental rights” unless it “finds a compelling reason for determining that termination would be detrimental to the child due to” one of the six statutory exceptions. Accordingly, if the child is adoptable, only “ ‘in exceptional circumstances,’ ” may the court “ ‘choose an option other than the norm, which remains adoption.’ ” (*In re Anthony B.*, at p. 395, italics omitted.)

The parents had the burden to prove the existence of a statutory exception to termination. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) They relied on the beneficial parental-relationship exception (§ 366.26, subd. (c)(1)(B)(i)), which permits the juvenile court to avoid adoption if “[t]he parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*Ibid.*, italics added.) They had the burden to show that their relationship with R.G. “ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s right are not terminated.’ ”

(*In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.)

We review the juvenile court's assessment whether a beneficial relationship exists for substantial evidence. (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review for abuse of discretion the court's determination whether the cited relationship constitutes a " 'compelling reason for determining that termination [of parental rights] would be detrimental to the child.' " (*Ibid.*)

Both parents' appeals rely heavily on Riley's testimony and so both parents necessarily challenge the juvenile court's decision to give it little weight. But, as explained, we have no power to reassess witness credibility and so we may not consider Riley's oral testimony. (*In re Casey D., supra*, 70 Cal.App.4th at p. 53.) Similarly, the parents each testified that they behaved in a parental capacity during visits and they had a bond with R.G. But, the juvenile court also gave their testimony little weight and so we may not consider it. (*Ibid.*)

According to the record credited by the juvenile court, those visits the parents did attend were *always* monitored and never lasted more than two hours a week. Mother even admitted on the eve of the section 366.26 hearing that her weekly visits were a mere *30 minutes long*, which is insufficient time to develop the necessary parental relationship with the child. Moreover, according to the foster mother and *Riley's written assessments*, both parents behaved inappropriately and made improper comments during visits that undermined R.G.'s well-being to such a degree he had to resume therapy. In comparison, R.G. was attached to the foster parents' home where he had lived for half of his life. He wanted to be adopted by them. On this record,

the juvenile court reasonably concluded that the stability, security, and permanency of adoption outweighed any detriment that R.G. might experience from severing ties with these parents.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.